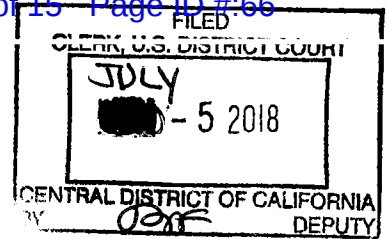


**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF DOCUMENT DISCREPANCIES



To: ☒ U.S. District Judge / ☐ U.S. Magistrate Judge Michael W. Fitzgerald

From: Renee Fisher, Deputy Clerk Date Received: July 5, 2018

Case No.: CV 18-5128 MWF (KSx) Case Title: Tire Stickers LLC v. Scuderia Automobili et al

Document Entitled: Answer and Affirmative Defenses

Upon the submission of the attached document(s), it was noted that the following discrepancies exist:

- | | |
|---|---|
| <input type="checkbox"/> Local Rule 5-4.1 | Documents must be filed electronically |
| <input type="checkbox"/> Local Rule 6-1 | Written notice of motion lacking or timeliness of notice incorrect |
| <input type="checkbox"/> Local Rule 7-19.1 | Notice to other parties of ex parte application lacking |
| <input checked="" type="checkbox"/> Local Rule 7.1-1 | No Certification of Interested Parties and/or no copies |
| <input type="checkbox"/> Local Rule 11-3.1 | Document not legible |
| <input type="checkbox"/> Local Rule 11-3.8 | Lacking name, address, phone, facsimile numbers, and e-mail address |
| <input checked="" type="checkbox"/> Local Rule 11-4.1 | No copy provided for judge |
| <input type="checkbox"/> Local Rule 11-6 | Memorandum/brief exceeds 25 pages |
| <input type="checkbox"/> Local Rule 11-8 | Memorandum/brief exceeding 10 pages shall contain table of contents |
| <input type="checkbox"/> Local Rule 15-1 | Proposed amended pleading not under separate cover |
| <input type="checkbox"/> Local Rule 16-7 | Pretrial conference order not signed by all counsel |
| <input type="checkbox"/> Local Rule 19-1 | Complaint/Petition includes more than 10 Does or fictitiously named parties |
| <input type="checkbox"/> Local Rule 56-1 | Statement of uncontroverted facts and/or proposed judgment lacking |
| <input type="checkbox"/> Local Rule 56-2 | Statement of genuine disputes of material fact lacking |
| <input type="checkbox"/> Local Rule 83-2.5 | No letters to the judge |
| <input type="checkbox"/> Fed. R. Civ. P. 5 | No proof of service attached to document(s) |
| <input checked="" type="checkbox"/> Other: | <u>Corporate Defendant can only be represented by counsel.</u> |

Please refer to the Court's website at www.cacd.uscourts.gov for Local Rules, General Orders, and applicable forms.

ORDER OF THE JUDGE/MAGISTRATE JUDGE

IT IS HEREBY ORDERED:

- ☐ The document is to be filed and processed. The filing date is ORDERED to be the date the document was stamped "received but not filed" with the Clerk. Counsel* is advised that any further failure to comply with the Local Rules may lead to penalties pursuant to Local Rule 83-7.

Date

U.S. District Judge / U.S. Magistrate Judge

- ☐ The document is **NOT** to be filed, but instead **REJECTED**, and is ORDERED returned to counsel.* Counsel* shall immediately notify, in writing, all parties previously served with the attached documents that said documents have **not** been filed with the Court.

7-5-18
Date

Michael W. Fitzgerald
U.S. District Judge / U.S. Magistrate Judge

* The term "counsel" as used herein also includes any pro se party. See Local Rule 1-3.

COPY 1 - ORIGINAL-OFFICE

COPY 2 - JUDGE

COPY 3 - SIGNED & RETURNED TO FILER

COPY 4 - FILER RECEIPT

TIREGRAFICX INC.

8600 COMMODITY CIRCLE STE 148

ORLANDO, FL 32819

Phone: (407) 900-0190

Email: STEVE@TIREGRAFICX.COM

Pro Se Defendant

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES

TIRE STICKERS LLC,)	
)	
Plaintiff,)	
)	CASE NUMBER: 2:18-CV-5128 MWF
vs.)	
)	ANSWER and
SCUDERIA AUTOMOBILI;)	AFFIRMATIVE DEFENSES
TIRE GRAFICX;)	
EMINEL HOLDINGS;)	
DOES 1 THROUGH 10, inclusive)	Judge: Hon. MICHAEL W. FITZGERALD
)	
Defendant.)	

RESPONSES TO THE CLAIMS IN THE COMPLAINT

Defendant TIRE GRAFICX Inc. ("TIREGRAFICX"), via *pro se*, answers the Complaint of TIRE STICKERS LLC ("Tire Stickers") as set forth below. Unless specifically admitted, TIREGRAFICX denies each of the allegations of Tire Stickers' Complaint.

ANSWER

1

CASE NUMBER 2:18-CV-5128

1. Defendant denies each and every allegation in the Complaint except those specifically admitted in this Answer.

2. Defendant admits all of the allegations in Paragraph 37.

3. Defendant does not know or have enough information to form a belief as to whether the allegations in the following paragraphs are true: 4, 11, 12, 13, 14.

4. Defendant admits only parts of each paragraph below, and denies or does not know enough to say whether the rest of the paragraph is true.

Paragraph 17: Defendant only admits that TIREGRAFICX is owned by Steven Mandala.

Paragraph 43: Defendant only admits that Notice of Termination was sent to TIREGRAFICX at its registered business address.

**FIRST CLAIM FOR RELIEF
BREACH OF CONTRACT**

5. TIREGRAFICX incorporates its responses to each and every allegation contained above with the same force and effect as if fully set forth herein.

6. TIREGRAFICX denies all of the allegations in Paragraph 44 through 49.

SECOND CLAIM FOR RELIEF

TRADEMARK INFRINGEMENT UNDER 15 U.S.C. SECTION 1114

7. TIREGRAFICX incorporates its responses to each and every allegation contained above with the same force and effect as if fully set forth herein.

8. TIREGRAFICX denies all of the allegations in Paragraph 50 through 59.

THIRD CLAIM FOR RELIEF

VIOLATION OF LANHAM ACT

9. TIREGRAFICX incorporates its responses to each and every allegation contained above with the same force and effect as if fully set forth herein.

10. TIREGRAFICX denies all of the allegations in Paragraph 60 through 64.

FOURTH CLAIM FOR RELIEF

COMMON LAW TRADEMARK INFRINGEMENT

11. TIREGRAFICX incorporates its responses to each and every allegation contained above with the same force and effect as if fully set forth herein.

12. TIREGRAFICX denies all of the allegations in Paragraph 65 through 71.

FIFTH CLAIM FOR RELIEF

VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE

13. TIREGRAFICX incorporates its responses to each and every allegation contained above with the same force and effect as if fully set forth herein.

14. TIREGRAFICX denies all of the allegations in Paragraph 72 through 76.

FURTHER ANSWER AND AFFIRMATIVE DEFENSES

By way of further Answer and as affirmative defenses, TIREGRAFICX denies that it is liable to Plaintiff on any of the claims alleged and denies that Plaintiff is entitled to damages, treble or punitive damages, equitable relief, attorneys' fees, costs, pre-judgement interest or to any relief whatsoever, and states as follows:

FIRST AFFIRMATIVE DEFENSE

(FAILURE TO STATE A CLAIM)

15. The Complaint, on one or more counts set forth therein, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(FAIR USE)

16. The claims made in the Complaint are barred, in whole or part, by the doctrines of fair use, nominative fair use, and/or descriptive use.

THIRD AFFIRMATIVE DEFENSE

(FIRST SALE DOCTRINE)

17. The claims made in the Complaint are barred, in whole or part, by the first sale doctrine.

FOURTH AFFIRMATIVE DEFENSE

(FUNCTIONALITY)

18. The claims made in the Complaint are barred, in whole or part, on the basis that any marks at issue are functional.

FIFTH AFFIRMATIVE DEFENSE

(INNOCENT INFRINGEMENT)

19. The claims made in the Complaint are barred, in whole or part, because any infringement, if any, was innocent.

SIXTH AFFIRMATIVE DEFENSE

(STATUTES OF LIMITATIONS)

20. The claims made in the Complaint are barred, in whole or part, by applicable statutes of limitations.

SEVENTH AFFIRMATIVE DEFENSE

(LACHES)

21. Plaintiff's complaints are barred by Laches, in that Plaintiff has unreasonably delayed efforts to enforce its rights, if any, despite its full awareness of TIREGRAFICX's actions.

EIGHTH AFFIRMATIVE DEFENSE

(GENERIC TERMS)

22. The claims made in the Complaint are barred, in whole or part, on the basis that some or all marks at issue are generic.

NINTH AFFIRMATIVE DEFENSE

(LACK OF SECONDARY MEANING)

23. The claims made in the Complaint are barred, in whole or part, on the basis that some of the marks at issue, including the mark "TIRE STICKERS" lack secondary meaning.

TENTH AFFIRMATIVE DEFENSE

(WAIVER AND ACQUIESCENCE)

24. Each of the purported claims set forth in this Complaint is barred by the doctrines of waiver and acquiescence.

ELEVENTH AFFIRMATIVE DEFENSE

(EQUITABLE ESTOPPEL)

25. Each of the purported claims set forth in this Complaint is barred by the doctrine of Equitable Estoppel.

TWELFTH AFFIRMATIVE DEFENSE

(NON-INFRINGEMENT)

26. Defendant has not infringed any applicable trademarks under federal or state law.

THIRTEENTH AFFIRMATIVE DEFENSE

(NO CAUSATION AND NO DAMAGE)

27. Plaintiff's claims against TIREGRAFICX are barred because Plaintiff's damages, if any, were not caused by TIREGRAFICX.

28. Without admitting that the Complaint states a claim, there has been no damage in any amount, manner, or at all by reason of any act alleged against Defendant in the Complaint, and the relief prayed for in the Complaint therefore cannot be granted.

FOURTEENTH AFFIRMATIVE DEFENSE

(UNCLEAN HANDS)

29. Plaintiff's claims are barred by the doctrine of unclean hands.

FIFTEENTH AFFIRMATIVE DEFENSE

(ADEQUACY OF REMEDY AT LAW)

30. The alleged injury or damage suffered by Plaintiff, if any, would be adequately compensated by damages. Accordingly, Plaintiff has a complete and adequate remedy at law and is not entitled to see equitable relief.

SEVENTEENTH AFFIRMATIVE DEFENSE

(FAILURE TO MITIGATE)

31. The claims made in the Complaint are barred, in whole or part, because of a failure to mitigate damages, if such damages exist.

EIGHTEENTH AFFIRMATIVE DEFENSE

(FIRST AMENDMENT)

32. The claims made in the Complaint are barred, in whole or part, by the First Amendment to the Constitution of the United States.

NINETEENTH AFFIRMATIVE DEFENSE

(DUPLICATIVE CLAIMS)

33. Without admitting that the Complaint states a claim any remedies are limited to the extent that there is sought an overlapping or duplicative recovery pursuant to the various claims for any alleged single wrong.

TWENTIETH AFFIRMATIVE DEFENSE

(FRAUD)

34. The claims made in the Complaint are barred, in whole or part, by fraud on the United States Patent & Trademark Office.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(ABANDONMENT)

35. The claims made in the Complaint are barred, in whole or part, by abandonment of any marks at issue.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(THIRD-PARTY USE)

36. The claims made in the Complaint are barred, in whole or part, by reason of other parties' use of any marks at issue.

ANSWER

7

CASE NUMBER 2:18-CV-5128

TWENTY-THIRD AFFIRMATIVE DEFENSE

(ACTIONS OF OTHERS)

37. The claims made in the Complaint are barred, in whole or part, because TIREGRAFICX is not liable for the acts of others over whom it has no control.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(NO BREACH OF CONTRACT)

38. The claims made in the Complaint are barred, in whole or part, because TIREGRAFICX never entered into any contract, written or verbal, with Plaintiff, and therefore is not liable nor accountable under the contract listed in the Complaint, if any liability or accountability exists.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(NO ASSIGNMENT)

39. The claims made in the Complaint are barred, in whole or part, because TIREGRAFICX was never given a Letter of Assignment, nor agreed to any Assignment of Contract by the Plaintiff, and therefor is not liable nor accountable under the contract listed in the Complaint, if any liability or accountability exists.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(NO PUNITIVE DAMAGES)

40. TIREGRAFICX alleges that no punitive or exemplary damages should be awarded arising out of the claims made in the Complaint under the law of the United States and California because: (i) an award of punitive or exemplary damages would be unconstitutional under the United States and California Constitutions;

specifically, the First Amendment to the United States Constitution; (ii) any recovery of punitive or exemplary damages arising out of the claims made in the Complaint would constitute the imposition of a criminal fine or penalty without the substantive or procedural safeguards guaranteed by the Fifth Amendment and Fourteenth Amendments to the United States Constitution; (iii) the imposition of any punitive or exemplary damages in this lawsuit would constitute an excessive fine or penalty; (iv) any such award is precluded or limited pursuant to the United States Constitution and the due process clause; and (v) punitive damages would violate the United States and California Constitutions and common law because such an award is based from procedures that are vague, open-ended unbound in discretion, arbitrary, and without sufficient constraints or protection against arbitrary and excessive awards.

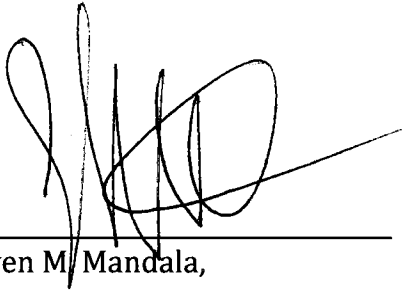
ADDITIONAL DEFENSES

41. TIREGRAFICX reserves the right to assert additional defenses based on information learned or obtained during discovery.

WHEREFORE, TIREGRAFICX prays for judgement as follows:

1. That TIRE STICKERS takes nothing by way of its Complaint;
2. That the Complaint, and each and every purported claim for relief therein be dismissed with prejudice
3. That TIREGRAFICX be awarded its costs of suit incurred herein, including attorneys' fees and expenses.

4. For such other and further relief as the Court deems just and proper.

A handwritten signature in black ink, appearing to read 'S. Mandala', is written over a horizontal line.

Steven M. Mandala,
For
TIREGRAFICX Inc.
8600 Commodity Circle
Suite 148
Orlando, FL 32819
(407) 900-0190
No facsimile available
steve@tiregraficx.com

Respectfully Submitted,

TIREGRAFICX Inc.,
Pro Se Defendant

CERTIFICATE OF SERVICE

You must serve each document you file by sending or delivering to the opposing side. Complete this form, and include it with the Answer that you file and serve.

1. **Case name** [write Plaintiff's name on the first line, and your name on the second line]:

TIRE STICKERS v. Scuderia Automobili, TIREGRAFICX., et. al.

2. **Case number:** 2:18-CV-5128

3. **Document served:** Answer [if you added a claim of your own, check the box for that claim]

☐ Counterclaim ☐ Crossclaim

4. **How was the Answer served?** [check one]

☐ Placed in U.S. Mail

☐ Hand-delivered

☒ Sent for delivery (e.g., FedEx, UPS)

☐ Sent by fax (if the other party has agreed to accept service by fax)

5. **To whom was the Answer sent?** [For each person you sent the document, write their full name and contact information used.]

Jeffrey M. Singletary

Snell & Wilmer LLP

600 Anton Blvd Suite 1400

Costa Mesa, CA 92626

6. **When was the Answer served?** 06/29/2018

7. **Who served the Answer?** [Whoever puts it into the mail, faxes, delivers or sends for delivery should sign, and print their name and address. You can do this yourself.]

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Signature:

Name:

Address:

Steven Mandala, for TIREGRAFICX

8600 COMMODITY CIRCLE #148

ORLANDO, FL 32819

UPS Internet Shipping: View/Print Label

1. **Ensure there are no other shipping or tracking labels attached to your package.** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
2. **Fold the printed label at the solid line below.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.

3. GETTING YOUR SHIPMENT TO UPS**Customers with a Daily Pickup**

Your driver will pickup your shipment(s) as usual.

Customers without a Daily Pickup

Take your package to any location of The UPS Store®, UPS Access Point(TM) location, UPS Drop Box, UPS Customer Center, Staples® or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the 'Find Locations' Quick link at ups.com.


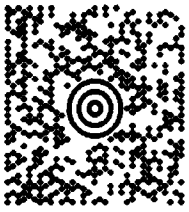
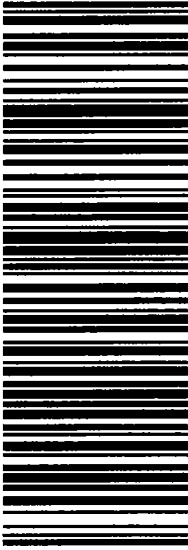

Schedule a same day or future day Pickup to have a UPS driver pickup all of your Internet Shipping packages. Hand the package to any UPS driver in your area.

UPS Access Point™
THE UPS STORE
9924 UNIVERSAL BLVD
ORLANDO ,FL 32819

UPS Access Point™
EL RIO BRAVO
4148 W OAK RIDGE RD
ORLANDO ,FL 32809

UPS Access Point™
STOP & SHOP GROCERY
2423 W OAK RIDGE RD
ORLANDO ,FL 32809

FOLD HERE

STEVEN MANDALA 4079000190 TIREGRAPHY 8600 COMMODITY CIRCLE STE 148 ORLANDO FL 32819	0.1 LBS LTR	1 OF 1
SHIP TO: JEFFREY M SINGLETARY 7144277000 SNELL & WILMER LLP SUITE 1400 600 ANTON BLVD COSTA MESA CA 92626-7689		
CA 926 9-10 		
 UPS NEXT DAY AIR SAVER 1P TRACKING #: 1Z 976 W8X 13 3322 9906		
		
BILLING: P/P		
 UPS 20 0 42 MACN50 99 0A 04/2018		

Name: TIREGRAFICX INC
 Address: 8600 Commodity Circle Unit 148
Orlando, FL 32819
 Phone Number: 407-900-0190
 E-mail Address: steve@tiregraficx.com
 Pro Se

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

TIRE STICKERS LLC

CASE NUMBER

2:18-cv-5128 MWF

PLAINTIFF(S)

v.

TIREGRAFICX INC
 pro se defendant

APPLICATION FOR PERMISSION
 FOR ELECTRONIC FILING

DEFENDANT(S)

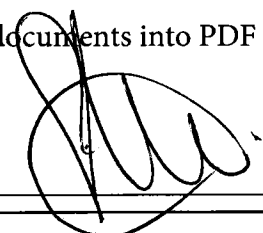
As the (Plaintiff/Defendant) Defendant ☒ in the above-captioned matter, I respectfully ask the Court for permission to participate in electronic filing ("e-filing") in this case. I hereby affirm that:

1. I have reviewed Local Rule 5-4.1.1 and the instructions available at the Pro Se E-Filing webpage located on the Court's website.
2. I understand that once I register for e-filing, I will receive notices and documents only by e-mail in this case and not by U.S. mail.
3. I understand that if my use of the CM/ECF system is unsatisfactory, my e-filing privileges may be revoked and I will be required to file documents in paper, but will continue to receive documents via e-mail.
4. I understand that I may not e-file on behalf of any other person in this or any other case.
5. I have regular access to the technical requirements necessary to e-file successfully:

Check all that apply.

- ☒ A Computer with internet access.
- ☒ An e-mail account on a daily basis to receive notifications from the Court and notices from the e-filing system.
- ☒ A scanner to convert documents that are only in paper format into electronic files.
- ☒ A printer or copier to create required paper copies such as chambers copies.
- ☒ A word-processing program to create documents; and
- ☒ A PDF reader and a PDF writer to convert word processing documents into PDF format, the only electronic format in which documents can be e-filed.

Date: 06/28/2018

Signature: 

EXTREMELY URGENT

UPS.com

Do not use this envelope

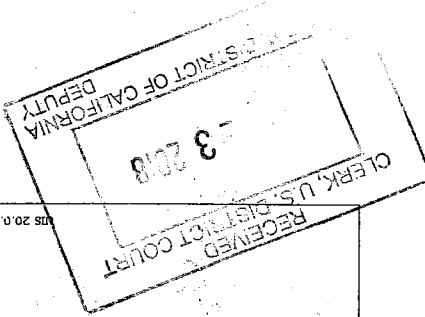
UPS Ground

UPS Standard

UPS 3 Day Select

UPS Worldwide Expedited

ups.com/uis/create?ActionOriginPair=default..._PrintWindowPage&key=labelWindow&type=html&loc=en_US&instr=A&doc=shipment_1975730221... 1/1



SHIP TO: US DISTRICT COURT WESTERN DIVISION HON. MICHAEL W FITZGERALD FOURTH FLOOR 350 WEST FIRST STREET FIRST STREET COURTHOUSE LOS ANGELES CA 90012-4536	
CA 901 9-12	
UPS 2ND DAY AIR	
TRACKING #: 1Z 976 W8X 02 3211 9511	
2	
BILLING: P/P	

International Shipping Notice - Carriage hereunder may be subject to the rules relating to liability a terms and /or conditions established by the Convention for the Unification of Certain Rules of Intern Carriage by Air (the 'Warsaw' Convention) and/or the Convention on the Contract for the Internatio Carriage of Goods by Road (the 'CMR Convention'). These commodities, technology or software were avanted from the IIS in accordance with the Export Administration Regulations Diversion contr